

23  
30.06.2021  
TN

CO No.632 of 2021

(Via video conference)

Debiprasad Ghosh  
Vs.  
Sri Kumarendra Bagchi and others

Mr. Debjit Mukherjee,  
Mr. Kaustav Bhattacharya

.... for the petitioner

Affidavit-of-service filed in court today be kept on record.

Despite proper service, none appears on behalf of the plaintiff/opposite party no.1 when the matter is called on for hearing.

The short point involved in the matter is whether the trial court was justified in passing the latter portion of the impugned order dated September 29, 2020, thereby allowing an application for local inspection under Order XXXIX Rule 7 of the Code of Civil Procedure without advertng to any of the reasons for so allowing and/or to the nexus between the said application and the suit itself. Such order, moreover, was

passed *ex parte* in the absence of the present petitioner. It is well-settled that such an order cannot be passed *ex parte*, unless there is extreme urgency which has to be recorded in the order itself.

That apart, in the absence of any connection between the local inspection sought by the opposite party no.1 and the adjudication of the suit being reflected from the order, the impugned order is vitiated by patent miscarriage of justice and erroneous exercise of jurisdiction by the trial court.

Accordingly, CO No.632 of 2021 is allowed, thereby setting aside the latter part of the Order No.2 dated September 29, 2020, whereby the Civil Judge (Senior Division) at Bolpur, Birbhum *ex parte* allowed an application under Order XXXIX Rule 7 of the opposite party no.1 in Title Suit No.81 of 2020. The Trial Judge shall adjudicate the said application afresh on merits upon notice to both sides in the light of the above observations.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)